

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

DOMINIC MIDGETT, #305160,

Petitioner,

v.

CIVIL ACTION NO. 2:04cv565

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The petition alleges violation of federal rights pertaining to petitioner's conviction on November 2, 2001, in the Circuit Court of the City of Portsmouth, Virginia for possession of marijuana with intent to distribute, as a result of which he was sentenced to serve four years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Civil Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge recommending dismissal of the petition was filed on May 12, 2005. By copy of the report, each party was advised of his right to file written objections to the findings and

recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge's Report and Recommendation and the time for filing same has expired.¹

The Court hereby ADOPTS the findings and recommendations set forth in the report of the United States Magistrate Judge filed on May 12, 2005, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED with prejudice as the claims are barred by the statute of limitations. It is, therefore, ORDERED that judgment be entered in favor of the respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. The petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

¹The Court notes that the Report and Recommendation contains a typographical error on page two at paragraph two and should be corrected to state that the Virginia Supreme Court dismissed Midgett's petition on June 14, 2004, and not on June 14, 2002.

The Clerk shall mail a copy of this Order to the petitioner and to counsel of record for respondent.

ENTERED this 13th day of June, 2005.

_____/s/
Jerome B. Friedman
United States District Judge